

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF PUERTO RICO**

**IN THE MATTER:**

FRANCISCO M GONZALEZ RIVERA

Debtor(s)

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FIRSTBANK PUERTO RICO

Movant

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**CASE NO.:** 10-10809 (BKT)

**CHAPTER 13**

(X) An action against the State  
under Title 11 USC §1307(c) (1) and  
§1307(c) (6), Title 11 USC §1326

**MOTION TO DISMISS**

TO THE HONORABLE COURT:

Comes now Movant, **FIRST BANK PUERTO RICO**, through its undersigning attorney, and very respectfully ALLEGES, STATES and PRAYS:

1. This Honorable Court have jurisdiction under Title 28 USC §1334, and venue under Title 28 USC §1408, and particularly regarding this matter under Title 11 USC §1307(c) (1), (4) and (6), on Conversions and Dismissals, and Title 11 USC §1326, on Payments.

2. Debtor filed the instant petition under a chapter 13 on November 17, 2010.

3. MOVANT, standing to address this Court is ascertained as it filed a secured lien claim on a personal security agreement under acc. no. 0568 for the outstanding debt of \$11,591.50. *Cfm. Reg. no. 2-1*

4. As of to May 20, 2011 debtor(s) already had the following installments owed to the chapter 13 Trustee: \$650.00 dollars, for TWO (2) months in arrears. *Exhibit A*.

5. This evidence as well, is not ready for confirmation under 11 USC §1325 (a) (1) that provides... Except as provided in subsection (b), the court shall confirmed a plan *if* - a feasibility problem for confirmation under 11 USC §1325 (a) (6) ... the debtor will be able to make all payments under the plan and to comply with the plan; and none compliance with the "new" provisions under 11 USC §1326(a) (1) Unless the court orders otherwise, the debtor shall commence making ~~the payments proposed by the plan 30 days after the plan is filed;~~ payments not

later than 30 days after the date of the filing of the plan or the order for relief, whichever is earlier, in the amount – (A) proposed by the plan to the trustee;

6. Under the terms of the proposed plan dated may 10, 2011 debtor(s) should have started to make continues payments since December 17, 2010, and as evidenced herein, the debtor(s) have failed to do so. *Docket no. 46.*

7. Pursuant to the Service Members Civil Relief Act: - the data banks of the Department of the Defense Manpower Data Center confirmed that the debtor(s) is (are) not member(s) of the Uniformed Services (US Armed Forces, Navy, Marine Corps, Air Force, NOAA, Public Health, and Cost Guard.) *Exhibit A and B*

For the reasons stated above, MOVANT respectfully request from this Court to enter an order dismissing the present case pursuant Title 11 USC §1307(c) (1) on ***Unreasonable delay by debtor that is prejudicial to Creditors*** and (6) on ***Material default by the debtor with respect to a term or confirmed plan***

#### **NOTICE**

Within thirty (30) days after service as evidenced by the certification, and an additional three (3) days pursuant to Fed. R. Bank. P. 9006(f) if you were served by mail, any party against whom this motion has been served, or any other party to the action who objects to the relief sought herein, shall serve and file an objection or other appropriate response to this paper with the Clerk's office of the U.S. Bankruptcy Court for the District of Puerto Rico. If no objection or other response is filed within the time allowed herein, this motion will be deemed unopposed and may be granted unless: (i) the requested relief is forbidden by law; (2) the requested relief is against public policy; or (iii) in the opinion of the Court, the interest of justice requires otherwise.  
Puerto Rico Local Bankruptcy Rule 9013-1(h)

In San Juan, Puerto Rico, May 23, 2011

#### **CERTIFICATE OF SERVICE**

**I hereby certify** that a copy was served by CM/ECF at the authorized address: - to all creditors, - to Atty. Alejandro Oliveras//José Carrión Morales, as Chapter 13 Trustee, and - to the attorney of the debtor(s) JOSE PRIETO CARBALLO, and to debtor(s) by regular mail at the address on record, - FRANCISCO M GONZALEZ RIVERA, at 11628 PRINCIPE ALBERTO, RIO GRANDE ESTATE, RIO GRANDE, PUERTO RICO RIO 00745.

By: //S// María M. Benabe Rivera  
**MARIA M. BENABE-RIVERA, ESQ.**  
Attorney for Movant - US - DC 208906  
MARISTELLA SANCHEZ – RODRIGUEZ – US – DC 224714  
1519 Ponce De León Ave., 2<sup>nd</sup> Floor  
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[maria.benabe@firstbankpr.com](mailto:maria.benabe@firstbankpr.com) [Rev.04/2011]

# First Bank

## Analysis Sheet to Determine Arrears to Trustee

**IN RE :** FRANCISCO GONZALEZ RIVERA/  
JOMARIE FERIA DIAZ **Case #** 10-10809 BKT

**Date petition filed:** 17-Nov-10

**First payment due date :** 17-Dec-10

**According to Plan Dated on:** 10-May-11

<b>Monthly Payment of:</b>	\$	475.00	\$	325.00	\$	445.00	\$	545.00	\$	-
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<b>Term:</b>		2		10		24		24		0
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<b>Pass Term:</b>		2		4		0		0		0
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<b>Should Have Paid In:</b>	\$	950.00	\$	1,300.00	\$	-	\$	-	\$	-
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<b>Total Paid Into Plan:</b>	\$	950.00	\$	650.00	\$	-	\$	-	\$	-
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<b>Amount in Arrears:</b>	\$	-	\$	650.00	\$	-	\$	-	\$	-
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**TOTAL \$ 650.00**

**Next payment date:** 17-Jun-11 (2 ATRASOS)

**Refer for MTD on :** REFER

**Printed On :** 20-May-11

**Prepared by :** YANIRA RIVERA CARLO

**Note :**

*Exhibita*

Close Window

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10410300-200	REMICON P M CORRAL ET RIVERA (xxx-xx-0133)	RIO GRANDE ESTATE 11028 PRINCEPE ALBERTO RIO GRANDE + PR + 00745	\$335.00 MO	Bar Date(s): 3/17/2011 (Has passed) 5/16/2011 (Has passed)
JOMARIE M FERRA DIAZ (xxx-xx-8682)			Confirmed:	Not Confirmed
Trustee: ALEJANDRO OLIVERAS RIVERA			Case Status:	ACTIVE
Attorney: JOSE M PRIETO CARBALLO				

### Financials

Date	Payee	Account	Amount	Description	Balance
5/3/2011	8	FIRST BANK PUERTO RICO	7127831	CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS	\$200.00
5/3/2011	10	TOYOTA MOTOR CREDIT CORP	2066254	CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS	\$200.00
5/3/2011		ALEJANDRO OLIVERAS RIVERA	2065755	TRUSTEE SALARY & EXPENSE - MONTHLY DISBURSEMENTS	\$39.56
4/28/2011			0500 01370 9391	LOCKBOX PAYMENT	\$325.00
4/1/2011	8	FIRST BANK PUERTO RICO	7127543	CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS	\$200.00
4/1/2011	10	TOYOTA MOTOR CREDIT CORP	2064827	CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS	\$200.00
4/1/2011		ALEJANDRO OLIVERAS RIVERA	2064301	TRUSTEE SALARY & EXPENSE - MONTHLY DISBURSEMENTS	\$39.56
3/25/2011			0501 00970 0138	LOCKBOX PAYMENT	\$325.00
3/1/2011	8	FIRST BANK PUERTO RICO	7127242	CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS	\$150.00
3/1/2011	10	TOYOTA MOTOR CREDIT CORP	2063121	CREDITOR PAYMENT (PRINCIPAL) - MONTHLY DISBURSEMENTS	\$150.00
3/1/2011		ALEJANDRO OLIVERAS RIVERA	2062644	TRUSTEE SALARY & EXPENSE - MONTHLY DISBURSEMENTS	\$29.67
2/25/2011			0600 00281 0134	LOCKBOX PAYMENT	\$475.00
2/3/2011			010 2 -3 2011	OFFICE DIRECT DEPOSIT	\$475.00
				<b>Totals:</b>	<b>\$1,600.00</b>
					<b>\$1,208.79</b>

Case Schedules

Breakdown for Combined Schedules

1	12/2010	\$475.00	\$475.00
2	1/2011	\$475.00	\$950.00
3	2/2011	\$325.00	\$325.00
4	3/2011	\$325.00	\$325.00
5	4/2011	\$325.00	\$325.00
6	5/2011	\$325.00	\$650.00

→ Total Delinquent Amount: \$650.00 ←

Department of Defense Manpower Data Center

May-20-2011 10:30:36



Military Status Report  
Pursuant to the Service Members Civil Relief Act

Last Name	First/Middle	Begin Date	Active Duty Status	Active Duty End Date	Service Agency
GONZALEZ RIVERA	FRANCISCO M.	Based on the information you have furnished, the DMDC does not possess any information indicating the individual status.			

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard).

*Mary M. Snavelly-Dixon*

Mary M. Snavelly-Dixon, Director  
Department of Defense - Manpower Data Center  
1600 Wilson Blvd., Suite 400  
Arlington, VA 22209-2593

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Service Members Civil Relief Act (50 USC App. §§ 501 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual is on active duty, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service via the "defenseink.mil" URL <http://www.defenselink.mil/faq/pis/PC09SLDR.html>. If you have evidence the person is on active duty and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. §521(c).

If you obtain additional information about the person (e.g., an SSN, improved accuracy of DOB, a middle name), you can submit your request again at this Web site and we will provide a new certificate for that query.

This response reflects **active duty status** including date the individual was last on active duty, if it was within the preceding 367 days. For historical information, please contact the Service SCRA points-of-contact.

**More information on "Active Duty Status"**

Active duty status as reported in this certificate is defined in accordance with 10 USC § 101(d)(1) for a period of more than 30 consecutive days. In the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy TARs, Marine Corps ARs and Coast Guard RPAs. Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps) for a period of more than 30 consecutive days.

**Coverage Under the SCRA is Broader in Some Cases**

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate.

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of SCRA extend beyond the last dates of active duty.

Those who would rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected.

**WARNING:** This certificate was provided based on a name and SSN provided by the requester. Providing an erroneous name or SSN will cause an erroneous certificate to be provided.

Report ID:E8HT349CVU

Department of Defense Manpower Data Center

May-20-2011 10:31:33



Military Status Report  
Pursuant to the Service Members Civil Relief Act

Last Name	First/Middle	Begin Date	Active Duty Status	Active Duty End Date	Service Agency
FERIA DIAZ	JOMARIE M.	Based on the information you have furnished, the DMDC does not possess any information indicating the individual status.			

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard).

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**Coverage Under the SCRA is Broader in Some Cases**

*Exhibit C*



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Report ID:LTHFER715L